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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/830,143	04/21/2004	John H. Schneider	769-281 DIV1	7840
7590 09/07/2004				
Gerald Levy Piteny, Hardin, Kipp & Szuch LLP 685 Third Avenue New York, NY 10017			EXAMINER	
			SIPOS, JOHN	
			ART UNIT	PAPER NUMBER
			3721	

DATE MAILED: 09/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/830,143

Applicant(s)

SCHNEIDER ET AL.

Examiner

John Sipos

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-22 is/are pending in the application.
- 4a) Of the above claim(s) 21 and 22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 13-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

RESTRICTION REQUIREMENT

Restriction to one of the following inventions is required under 35 U.S.C. 121:

Group I. Claims 13-20, drawn to a method of feeding a sheet through a forming box, classified in Class 53, subclass 412.

Group II. Claims 21 and 2, drawn to the method and apparatus of forming packages, classified in Class 53, subclass 450.

The inventions are distinct, each from the other, because of the following reasons:

The inventions of Groups II and I are related as **combination and subcombination**. A restriction requirement is based on the presumption that all claims of record define patentable inventions. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for its presumed patentability and (2) that the subcombination has utility by itself or in other combinations. (See MPEP 806.06(c)). In the instant case, a comparison of combination claim 21/22 and subcombination claim 13 provides evidence that the combination, as claimed, does not require the particulars of the subcombination, as claimed, for its presumed patentability. Subcombination claim 13 sets forth the forming box and its structure. Combination claim 21/22 does not set forth these particulars and, consequently, does not require them for patentability. Even if other combination claims *do* set forth these particulars, distinction between the *inventions* is shown if any one combination claim does not include the particulars of any one subcombination claim. The presence of the particulars in other combination claims indicates that they *may be* included as part of the combination, but the claims selected above provide evidence that the particulars are not *required*. (See MPEP 806.05(c), Example 3.) The subcombination

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has separate utility because it can be used in packaging operations without the rest of the combination.

Because these inventions are distinct for the reasons given above, and because they have acquired a separate status in the art as shown by their different classifications, restriction for examination purposes, as indicated, is proper.

Applicant is advised that the response to this requirement, to be complete, must include an election of the invention to be examined even if the restriction requirement is traversed.

During a telephone conversation between Examiner John Sipos and Mr. R. Brown, attorney of record in this case, on 8/23/04, a provisional election was made with traverse to prosecute the invention of Group I comprising claims 13-20. Affirmation of this election must be made by applicant in responding to this Office action. Claims 21 and 22 are withdrawn from further consideration by the examiner as being drawn to a non-elected invention. (See 37 CFR 1.142(b)). An action on the merits of the elected claims follows.

Applicant is reminded that, upon cancellation of claims to a non-elected invention, the **inventorship must be amended** in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently filed petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(h). Applicant should further **amend the title**, in necessary, to reflect the elected invention.

MINOR INFORMALITIES

The following minor informalities are noted. Applicant should correct these informalities to expedite the examination of this application.

The continuation data relating to parent case 09/885211 should be inserted as the first sentence on the first page of the specification.

REJECTIONS OF CLAIMS BASED ON FORMAL MATTERS

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of 37 CFR 1.71(a)-(c):

- (a) The specification must include a written description of the invention or discovery and of the manner and process of making and using the same, and is required to be in such full, clear, concise, and exact terms as to enable any person skilled in the art or science to which the invention or discovery appertains, or with which it is most nearly connected, to make and use the same.
- (b) The specification must set forth the precise invention for which a patent is solicited, in such manner as to distinguish it from other inventions and from what is old. It must describe completely a specific embodiment of the process, machine, manufacture, composition of matter or improvement invented, and must explain the mode of operation or principle whenever applicable. The best mode contemplated by the inventor of carrying out his invention must be set forth.
- (c) In the case of an improvement, the specification must particularly point out the part or parts of the process, machine, manufacture, or composition of matter to which the improvement relates, and the description should be confined to the specific improvement and to such parts as necessarily cooperate with it or as may be necessary to a complete understanding or description of it.

The specification is objected to under 37 CFR 1.71 as failing to adequately teach how to make and use the invention, i.e. failing to provide an enabling disclosure. (A rejection of claims based on this objection follows this paragraph.) The structure of the supporting conveyor with a

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longitudinal slit is not sufficiently set forth and its structure is not clear. How does a conveyor structures to have a slit accommodating the longitudinal edges of the film?

Claims 15-17 are rejected under **35 U.S.C. ' 112, first paragraph**, as being predicated on an **insufficient disclosure** for the reasons set forth in the objection to the specification set forth above.

REJECTIONS OF CLAIMS BASED ON PRIOR ART

The following is a quotation of the appropriate paragraphs of 35 U.S.C. ' 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 13 and 14 are rejected under **35 U.S.C. ' 102(b)** as being clearly anticipated by the patent to Suga (5,109,654). The patent to Suga shows a packaging method that comprises moving a packaging sheet within a forming box 11, about guide bars 23 that extend downstream from the outlet end of the forming box and onto supporting conveyor 14. The tube of wrapped articles is then cross sealed at 41 to form individual packages. Regarding claim 14, the structure set forth in the claim is given little patentable weight since it doesn't affect the process steps. Note that the claimed step of feeding the product through the forming box is shown by Suga.

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The following is a quotation of 35 U.S.C. ' 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18-20 are rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to Suga (5,109,654). The use of transverse or longitudinal zippers on packaging films is well known in the art and their use would have been obvious to one of ordinary skill in the art in the Suga process to provide a mechanism for easily opening the packages.

Claims 13-20 are rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to Leino (4,970,846) in view of Fujiwara (6,119,435) or Cassoli (4,679,379) or Fujiwara (6,119,435) or Cassoli (4,679,379) in view of Leino (4,970,846).

The patent to Leino shows the moving of a packaging sheet within a forming section 20 to fold the sheet downwardly, feeding the sheet and article onto supporting conveyors 54a,54b having a slit in-between, feeding and sealing the longitudinal edges of the sheet in the slit at 46 and cross sealing the sheet at 30 to form individual packages. .

The patents to Fujiwara and Cassoli show packaging methods that comprise moving a packaging sheet within a forming box 31 and 67, respectively, about guide bars 32 and 40, respectively, that extend downstream from the outlet end of the forming box and onto supporting conveyors 28 and 70, respectively. The articles are fed between the guiding bars which in turn aid in guiding the sheet onto the articles. These two references teach the guiding of the center of

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the sheet to the bottom of the forming box rather than to the top of the forming box as recited in the claims.

It would have been obvious to one of ordinary skill in the art to provide guide bars to the forming section of Leino to aid in the guiding of the sheet while feeding the article as taught by Fujiwara or Cassoli positively guide the article and conform the sheet around the article through the forming section. Alternatively, it would have been obvious to one of ordinary skill in the art to reverse the upward folding operation of Fujiwara or Cassoli to a downward folding operation and use lit supporting conveyors as shown by Leino.

ADDITIONAL REFERENCES CITED

The following prior art is made of record but has not been relied upon in the rejection of claims. However, the prior art is considered pertinent to applicant's disclosure.

The patents to Meissner, Jablonski, Gustavsson, Enrich and Kovacs show the guiding of packaging films into forming boxes and around guide bars.

The patents to Kopp, Johnson and Lin show packaging operation with downwardly folded longitudinal edges with Lin showing slotted supporting surface.

The Ausnit references show zippers fed longitudinally and transversally to films prior to packaging.

The patent to Yoshida shows parallel conveyors 33 supporting articles downstream of the forming box during the longitudinal sealing of the sheet edges.

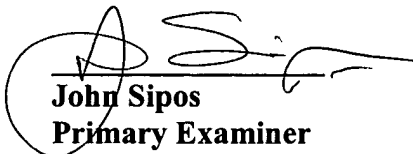
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Any inquiry concerning this communication should be directed to **Examiner John Sipos** at telephone number **(703) 308-1882**. The examiner can normally be reached from 6:30 AM to 4:00 PM Monday through Thursday.

The **FAX** number for Group 3700 of the Patent and Trademark Office is **(703) 872-9302**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Rinaldi Rada, can be reached at (703) 308-2187.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group Receptionist whose telephone number is (703) 308-1148.



John Sipos
Primary Examiner
Art Unit 3721

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